IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO.1477 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. Amit B. Borkar for the appellants.
Mr. S.S. Patwardhan for respondent No.1.

CORAM : A. M. KHANWILKAR, J.

DATE : FEBRUARY 16, 2006

P.C.

. Heard Counsel for the parties. I see no reason to depart from the concurrent findings recorded by the two Courts below. On the said findings conclusion reached by the Courts below was inevitable. The Counsel for the appellant however, contends that the findings reached are perverse. In his submission as the respondents in the plaint accept the position that there was

agreement executed in 19797 mentioning partition of the suit property, coupled with subsequent mutation entry in the village record, the mutation entry No.4481 and the acceptance of the fact in the plaint that the parties were in possession of the respective properties which has come to their share, it was not open to the trial Court to decree the suit for partition. This is so because, once the partition had been effected between the parties there can be no subsequent suit for the relief of partition, in law. The argument though seems to be attractive clearly overlooks the case made out before the Courts below, which has been accepted by both the Courts. According to the respondents/plaintiff, the existence of the document of 1977 is not in dispute. However it is specific case of the plaintiff that the parties did not give effect to the said understanding. Subsequently, the parties decided to go

for partition by agreement dated 24th February, 1977. There is no reason to depart from the findings of facts recorded by two Courts below, which has accepted this case of the plaintiff. Once this case is accepted, it necessarily follows that there was no partition either in fact or in law in terms of agreement of 1977, in which case it was always open to the plaintiff to apply for partition before the Court. Even on these reasoning no fault can be found with the approach of Courts below. Counsel for the appellant however, placed much emphasis on mutation entry No.4481. This mutation entry has been considered by the Courts below and after analysing the relevant material on record, the courts, as of fact have noted that the entry simply records heirship of the deceased predecessor of the parties Mr. Jivba More. There is no reason to depart from this finding. Even the document Exh. 127 supports this view taken by the

Court below. If it is so, it is not open for this Court in second appeal to overturn the findings of facts recorded by the Courts below. Thus no substantial question of law arises for consideration.

2. Hence, dismissed.

(A.M. KHANWILKAR, J.]